



## CITY OF HAYWARD AGENDA REPORT

Meeting Date 1/26/06  
Agenda Item 2

**To:** Planning Commission

**From:** Richard Patenaude, Principal Planner

**Subject:** Use Permit Application No. PL-2005-0576 - H&R Block (Applicant) / Hayward Whipple Associates (Owner) – Request to Modify Use Permit No. PL-2003-0153 to Allow Financial Institutions within a Multi-Tenant Retail Building

The Project Is Located at the Northeast Corner of Industrial Parkway Southwest and Whipple Road within the Target Center in an Industrial (I) District

### RECOMMENDATION:

Staff recommends that the Planning Commission deny the request for a modification to the Conditional Use Permit subject to the attached findings.

### DISCUSSION:

The Planning Commission approved a Conditional Use Permit on April 12, 2001, for a 126,000-square-foot Target store and a pad site for a single-tenant, 8,000-square-foot building. The uses anticipated for the pad site included a restaurant or a regional/subregional-serving retail store. The City Council Commercial Center Improvement Committee reviewed an application by *Macaroni Grill* restaurant in January 2002, but the application was withdrawn. The applicant subsequently applied to increase the size of the pad building to 16,151 square feet to accommodate multiple retail tenants. The Committee reviewed the proposal in January 2003 and stated a preference for a single-tenant store over a new strip center. While deferring to the Planning Commission, the Committee also stated a preference to limiting financial institutions to full-service banks to further accentuate the subregional market of the Target center. The Planning Commission granted approval of the multiple-tenant retail building, with a list of approved uses, in June 2003.

#### *Permitted Uses*

The Conditional Use Permit was required for the Target project to allow retail sales with a regional or sub-regional marketing base within the Industrial District. The intent of the use permit for the Target project was to provide for a sit-down restaurant or larger retailers such as Office Depot, Michael's or Borders on the pad site. However, the project is now a linear building that could hold as many as eight shops, averaging approximately 2,000 square feet each. While it would be difficult for the applicant to provide tenants in these spaces that would be

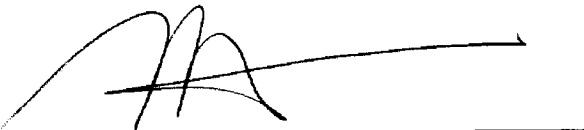
considered regional or subregional in nature, a list of uses was approved to retain as much consistency as possible with the intent of the original use permit. The list was developed from the permitted uses within the Central Business District (Southland Mall) as the Mall attracts a regional clientele. The approved list of uses includes restaurants, party supply stores, mattress stores, shoe stores, electronics retailers, bike shops, florists, fitness equipment stores and other similar retail commercial uses, as well as banks, barber and beauty shops, and copying/reproduction facilities (such as Kinko's). Such uses were determined to be supportive of the primary Target store. Other personal services, administrative and professional offices/services, service commercial uses and automobile related uses were prohibited, being considered more local-serving.

The applicant proposes a use that is not included in the list of approved uses; therefore, the request for modification is being made. Staff believes that the addition of professional services, which would not provide the full range of services of a bank, would further diminish the intent of the Zoning Ordinance and the General Plan to provide regional/subregional services at the Target center. With the current limitations on the permitted uses, the retail building is consistent with the City's earlier approval for development on this site and supports the anchor user (Target) at Hayward's southern gateway. The same list of approved uses has been applied to the Circuit City center across Whipple Road from the Target center, of which this project is a part.

#### **ENVIRONMENTAL REVIEW:**

A Mitigated Negative Declaration was previously prepared for the "Target" project. This project does not create any additional environmental impacts not anticipated by the Mitigated Negative Declaration. Therefore, no further environmental review is required.

Prepared and recommended by:



Richard E. Patenaude, AICP  
Principal Planner

#### **Attachments:**

- A. Approved Plans
- B. List of Approved Uses
- C. Findings for Denial

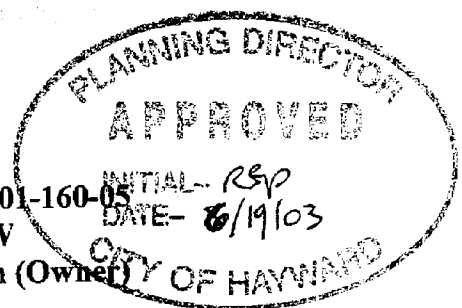
**CONDITIONS OF APPROVAL**

**PL 2003-0153 CUP**

**Modification of Use Permit/Site Plan Review No. 01-160-05**

**Whipple Road @ Industrial Parkway SW**

**Donald Imwalle (Applicant) / Target Corporation (Owner)**



**Planning Division**

1. PL 2003-0153 CUP (Modification of Use Permit/Site Plan Review No. 01-160-05) to accommodate a 16,151-square-foot, multi-tenant, retail commercial center shall be constructed according to these conditions of approval and the plans approved by the Planning Commission on June 19, 2003, and according to all relevant conditions approved by the Planning Commission on April 12, 2001, for UP 01-160-05.
2. This approval is void one year after the effective date of approval unless prior to that time an extension is approved. Any modification to this permit shall require review and approval by the Planning Director. A request for a one-year extension-of-time, approval of which is not guaranteed, must be submitted to the Planning Division at least 30 days prior June 19, 2004.
3. The uses permitted shall be limited to those Retail Commercial Uses that have a regional/sub-regional marketing base and are listed in Section 10-1.1315a.(5) (Central Business District – Retail Commercial Uses). Other approved uses are banks, barber or beauty shops, and copying and mailing facilities. Other similar uses may be approved by the Planning Director with the determination that they support a regional/sub-regional marketing base. Prohibited uses include industrial uses, administrative and professional offices/services (except banks), automobile related uses, personal services (except barber or beauty shops), service commercial uses (except copying and mailing facilities), and residential uses. Uses not otherwise approved by this modification shall require further modification of the Use Permit by the Planning Commission.
4. Unless otherwise required, all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director prior to final inspection and occupancy of any structures.
5. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
6. Violation of these conditions is cause for revocation of permit, after a public hearing before the duly authorized review body.
7. No outside storage of material, crates, boxes, etc. shall be permitted anywhere on site, except within the trash enclosure area as permitted by fire codes and within areas designated for outdoor display of merchandise for sale. No material shall be stacked higher than the height of the trash enclosure screen wall and gate.

**SEC. 10-1.1300 CENTRAL BUSINESS DISTRICT (CB)**

Sections:

Section 10-1.1305 Purpose.

Section 10-1.1310 Subdistricts.

Section 10-1.1315 Uses Permitted.

Section 10-1.1320 Conditionally Permitted Uses.

Section 10-1.1325 Lot Requirements.

Section 10-1.1330 Yard Requirements.

Section 10-1.1335 Height Limit.

Section 10-1.1340 Site Plan Review Required.

Section 10-1.1345 Minimum Design and Performance Standards.

**SEC. 10-1.1305 PURPOSE.**

The CB District shall be subject to the following specific regulations in addition to the general regulations hereinafter contained in order to make provision for a principal downtown area of regional importance, and several outlying areas of more than neighborhood importance, where concentrations of comparison shopping facilities, financial and business services, and amusement or recreation may be found in quantity.

**SEC. 10-1.1310 SUBDISTRICTS.**

Any combining B District (see Section 10-1.2400).

**SEC. 10-1.1315 USES PERMITTED.**

a. **Primary Uses.** The following uses, or uses determined to be similar by the Planning Director, are permitted in the CB District.

(1) **Administrative and Professional Offices/Services.**

- (a) Accounting and financial offices. (excluding check cashing stores)
- (b) Architectural and engineering offices.
- (c) Banks and financial institutions.
- (d) Chiropractic and acupuncture offices.
- (e) Insurance and real estate offices.
- (f) Law offices.
- (g) Medical and dental offices.
- (h) Travel and airline agency offices.

(2) **Automobile Related Uses.**

Automobile parts store.

(3) Personal Services.

- (a) Barber or beauty shop.
- (b) Dance studio.
- (c) Dry cleaner/laundry.
- (d) Martial arts studio.
- (e) Music studio.
- (f) Nail salon.
- (g) Palm reading.
- (h) Photography studio.
- (i) Physical fitness studio.
- (j) Shoe repair shop.
- (k) Tailor/seamstress shop.

(4) Residential Uses.

Residential dwelling unit(s).

(Above first floor commercial uses only)

(5) Retail Commercial Uses.

- (a) Antique store.
- (b) Appliance store.
- (c) Art and art supplies store.
- (d) Bakery.
- (e) Bicycle shop.
- (f) Bookstore.
- (g) Camera store.
- (h) Card shop.
- (i) Carpet/drapery store.
- (j) Clothing store.
- (k) Coffee/espresso shop.
- (l) Delicatessen.
- (m) Fabric store.
- (n) Floral shop.
- (o) Furniture store.
- (p) Garden supplies store.
- (q) Gift shop.
- (r) Hardware store.
- (s) Jewelry store.
- (t) Locksmith shop.
- (u) Music store.
- (v) Nursery (plant).
- (w) Paint/wallpaper store.
- (x) Pet grooming shop.
- (y) Pet store.
- (z) Plumbing and heating store.

- (aa) Restaurant. (Where not abutting a residential district or property and no bar)
- (bb) Sporting goods store.
- (cc) Stationary store.
- (dd) Supermarket.
- (ee) Theater. (Small Motion Picture or Live Performance only.)
- (ff) Toy store.
- (gg) Variety store.
- (hh) Video sales and rental store.

(6) Service Commercial Uses.

- (a) Copying or reproduction facility.
- (b) Mailing or facsimile service.
- (c) Reverse vending machine(s). (When located within a convenience zone)

(7) Other Uses.

- (a) Banquet hall. (Where not abutting a residential district or property and where no alcohol is served)
- (b) Broadcasting studio.
- (c) Catering facility.
- (d) Christmas tree or pumpkin patch lot. (See General Regulations Section 10-1.2735d. for standards)
- (e) Day care home. (State-licensed, less than 24-hour care for children or adults, 14 or fewer persons, excluding staff. See definitions)
- (f) Day Care Center. (State-licensed, less than 24-hour care for children or adults, 15 or more persons, excluding staff. See definitions.)
- (g) Public agency facilities.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the uses permitted in the CB District:

- (1) Accessory buildings and uses. (See Section 10.1.845d.)
- (2) Garage sales. (4 per year per dwelling. See General Regulations Section 10-1.2735e.)
- (3) Home Occupation. (See definitions.)
- (4) Household pets.

**FINDINGS FOR DENIAL**  
**PL 2005-0576 CUP**  
**Modification of Use Permit/Site Plan Review PL-2003-0153**  
**Whipple Road @ Industrial Parkway SW**  
**H&R Block (Applicant) / Hayward Whipple Associates (Owner)**

Based on the staff report and the public hearing record:

- A. The Target project, of which this proposal is a part, previously has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Evaluation Checklist has been prepared for the proposed project. The Initial Study has determined that the project, with the recommended mitigation measures, could not result in significant effects on the environment. The proposed modification would not create any significant change that would require additional environmental review.
- B. The modification is not in conformance with the General Policies Plan Map designation of Industrial Corridor. It has been determined that regional and subregional retail uses may be compatible on lands within the Industrial Corridor, which also have direct access to major transportation routes. The subject property is located proximate to the Nimitz Freeway (Route I-880). Modification of the approved list of permitted uses would add local-serving uses, which would not be compatible for tenants with a regional/subregional marketing base and would not support the larger retail tenant on the property.
- C. Modification of the approved list of permitted uses would not be in conformance with the intent and purpose of the Zoning Ordinance designation of Industrial (I) as proposed. Such district permits regional and subregional retail uses provided that such use complies with the General Policies Plan.
- D. The modification, as conditioned, will not provide a use that will have an adverse effect upon surrounding commercial and industrial development in that the proposed use is not supportive of the larger retailers existing and anticipated.

